

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on February 15, 2005 at 3:30 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. Carol C. Juneau, Vice Chairman (D)
Rep. John E. Witt, Vice Chairman (R)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Cynthia Hiner (D)
Rep. Joey Jayne (D)
Rep. Ralph L. Lenhart (D)
Rep. Walter McNutt (R)
Rep. Penny Morgan (R)
Rep. John L. Musgrove (D)
Rep. Rick Ripley (R)
Rep. Jon C. Sesso (D)
Rep. Janna Taylor (R)
Rep. Jack Wells (R)

Members Excused: Rep. John Sinrud (R)

Members Absent: Rep. Bill E. Glaser (R)
Rep. Ray Hawk (R)
Rep. Verdell Jackson (R)
Rep. Christine Kaufmann (D)

Staff Present: Jon Moe, Legislative Branch
Marcy McLean, Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 22, 2/10/2005; HB 134,
2/10/2005; HB 650, 2/10/2005

HEARING ON HB 134**Opening Statement by Sponsor:**

REP. GEORGE GOLIE, HD 20, Great Falls, opened the hearing on **HB 134**, a bill for an income tax credit for education expenses at the Montana University System. For \$32,000 in administrative costs, there would be a benefit to taxpayers in the amount of \$3.9 million. He said that HB 134 is the easiest way to support higher education in the Montana University System.

Proponents' Testimony:

Jessica Grennan, Associated Students of the University of Montana, said there are many benefits of attending college, including higher wages, less crime and greater contributors to charity. The State's sharing of funding the university system has decreased significantly over the past several years and anything that can be done for college students would be a benefit.

Meghan Dumas, Associated Students of Montana State University, said that any financial aid to college students is greatly appreciated.

Opponents' Testimony: None

Informational Testimony:

Jim McKeon, Department of Revenue, said that he was available to answer questions.

Questions from Committee Members and Responses:

REP. JUNEAU asked if all students pay state income tax. **REP. GOLIE** answered that residents do and non-residents do not. Parents of dependent students can take a tax credit to access this college credit.

REP. JAYNE asked if the General Fund impact of \$3.9 million is because the taxpayers are able to take this tax credit. **REP. GOLIE** said, "Yes."

Closing by Sponsor:

REP. GOLIE said HB 134 is not new spending. Its purpose is to give a tax break to Montana taxpayers who are paying high tuition.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8.5. Rep. Hawk entered hearing}

HEARING ON HB 650

Opening Statement by Sponsor:

REP. DON ROBERTS, HD 56, Billings, opened the hearing on **HB 650**, a bill to increase the reimbursement rate for the Medicaid dental program. In Montana, there are approximately 450 active dentists, with 340 of those dentists treating Medicaid patients. ***{Tape: 1; Side: A; Approx. Time Counter: 8.5 - 8.9; Comments: Rep. Hawk entered hearing.}***

Many of these dentists are not taking any new Medicaid patients. In eastern Montana, people have to drive great distances in order to find a dentist who will accept Medicaid. This is because the Medicaid reimbursement is below the dentist's overhead expenses. Over the years, increases in Medicaid reimbursement have not kept up with the cost of doing business. HB 650 requests using funds from Initiative 149 (I-149), the tobacco tax initiative, to increase the reimbursement rate to dentists. He presented amendment HB0065001, which shows the correct financial numbers. **EXHIBIT** (aph37a01)

Proponents' Testimony:

Mary McCue, Montana Dental Association, said that Montana currently only spends about 1% of the total \$650 million Medicaid budget for dental services. In July 2001, when the legislature increased the Medicaid budget for dentistry, it was quickly eaten up by a large increase in the number of people eligible for Medicaid. Therefore, the dentists never realized any additional reimbursement from the increased budget. **EXHIBIT** (aph37a02)

Although they are requesting that this reimbursement increase come from I-149, they also support the Alliance for a Healthy Montana's request to fully implement the intent of I-149, which would fund "Healthy Kids, Healthy Montana." She said that they urge the legislature to honor the letter of the law and spend the tax increase as directed by the initiative. The Alliance is requesting \$477,000 per year for an increase to the Medicaid dental program. The remaining amount requested in HB 650 would come from the General Fund.

If HB 650 passes, it would bring reimbursement rates from 60% to 90% of usual and customary charges for serving Medicaid patients. Even at 90% reimbursement, the dentists will not realize that

much, because there is a 25% no-show rate amongst Medicaid patients. This causes additional expense to the dentists because they are unable to re-schedule a patient to fill in for the no-show.

REP. BILL JONES, Dentist, Kalispell, said that he provides dental care to adult Medicaid patients. Many of these patients are developmentally disabled and are difficult to serve. He said that HB 650 is about access to dental care for poor people, rather than about dentists profiting from Medicaid. There are many Medicaid people requesting services, and not enough dentists taking new Medicaid patients because of the low reimbursement rate.

{Tape: 1; Side: A; Approx. Time Counter: 8.9 - 16.9}

Opponents' Testimony:

Jim Ahrens, Alliance for a Healthy Montana, said that they think HB 650 is a good bill. However, they have their own bill requesting \$954,000 per biennium from I-149 and the Governor has a bill requesting \$500,000 per biennium. He said that he suggests that the Committee wait until they have heard these other bills before deciding on HB 650. He said that they believe access to dental care is very important, and the dentists deserve an increase.

Informational Testimony:

Duane Preshinger, Department of Public Health and Human Services (DPHHS), said that he was available to answer questions.

Questions from Committee Members and Responses:

REP. JAYNE asked how many dentists are providing pro bono services. **Mary McCue** said that she did not have an exact number, but nearly every one of the 420 practicing dentists provide pro bono services at some time. The public dental clinics that employ dentists began with the volunteer efforts of dentists.

REP. JAYNE asked what the Governor's recommendation is for I-149. **Jim Ahrens** said that the Governor's biennial recommendation is to increase funding to \$500,000.

CHAIRMAN BUZZAS asked if the Alliance's proposal should pass, would the Dental Association request an additional \$300,000 from the General Fund. **Mary McCue** answered, "Yes."

REP. LENHART asked if dentists conduct follow-up with the 25% of Medicaid patients who do not keep their dental appointments.

Mary McCue said that this population has problems with transportation, lack of telephones, etc. A survey that had been done in 2000 showed that the no-show rate among the general population was about 8-9%.

REP. TAYLOR asked of the three plans being presented, which one does the DPHHS favor. **Duane Preshinger** said that the more dentists who take Medicaid patients, the better.

Closing by Sponsor:

REP. ROBERTS said that the dentists have a good referral network among other medical professionals (i.e., oral surgeon) for Medicaid patients. These referrals are often done for free, but the costs become prohibitive.

{Tape: 1; Side: A; Approx. Time Counter: 16.9 - 32.6; Comments: End of Side A}

HEARING ON HB 22

Opening Statement by Sponsor:

REP. WALTER MCNUTT, HD 37, Sidney, opened the hearing on **HB 22**, a bill requesting funding for water adjudication. He said that bill came about from the work of the Environmental Quality Council; water adjudication has been in the process for the past 27 years and probably has another 40-50 years before it is finished. If it is not finished, Montana stands the risk of a claim on our water from states downstream, which would be a huge problem. HB 22 will: 1) set a 10-year time frame for the Department of Natural Resources and Conservation (DNRC) to complete their claims examination; 2) set a five-year time frame for the water court to finish their decrees; 3) set benchmarks for the amount of claims exams DNRC has to do; and 4) set a fee schedule for all water rights owners.

EXHIBIT (aph37a03)

The fund generated by the water rights fees would have a cap of \$31 million, and it is projected it will take 10 years to reach that amount. It's possible that the federal government will contribute money to this fund, and the Governor has committed \$600,000 in 2006 and \$1 million in 2007.

He said that they have been working on this bill for two years, and originally it was a very contentious issue. However, at the public hearings they had no opponents. After much review, they determined that the \$10 flat rate per water right was the most equitable. In the late 1980's, the legislature decreased the appropriation by \$500,000 per year from the DNRC. Therefore, the

DNRC water adjudication process is down to a skeleton crew. HB 22 proposes that the funding be a statutory allocation through HB 2. Under this arrangement, the DNRC and the Water Court will have to biennially request their allocation. The Appropriations Committee will then be able to monitor their progress to the benchmarks on a regular basis. Currently, the funding for water adjudication is approximately \$2 million per year from the General Fund and state special revenues. HB 22 states that if that funding stops, the water rights fee stops also.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 13.4}

Proponents' Testimony:

Hal Harper, Governor's Office, said that the original water rights bill was introduced in 1973 and the reasons are still valid today. The Governor has included funding for the water adjudication process in his budget because he thinks it is an important public issue, and to cover the water rights that State agencies hold for fishing, wildlife, reclamation, and other purposes.

Darin Argenbright, Montana Grain Growers Association, said that they support full funding of water adjudication. Assigning ownership and usage rights to water resources is long overdue, particularly with ever increasing water usage and drought. He said that the Montana Farm Bureau also supports HB 22.

Mike Murphy, Montana Water Resources Association, said that while the water adjudication process initially was difficult to accept, they now recognize it is important and they accept the fee.

{Tape: 1; Side: B; Approx. Time Counter: 13.4 - 18.1}

Tom Ebezer, AVISTA Corporation, said that he served on the Environmental Quality Council. He said that he has seen how the water rights holders have come to accept this adjudication process. The need for this process has been recognized and people feel that the fee is equitable.

John Shontz, Northwest Montana Association of Realtors, said that HB 22 will help realtors clarify the description of property. Often times they find that multiple people will lay claim to the same water right. HB 22 will help to sort out these claims and determine legal ownership. He said, "Many people in Montana think they have a water right, when in fact, all they have is a claim." States around Montana have finished water adjudication, and if Montana gets into water rights disputes with them, their claims take priority because they have sorted them out.

Mary Sexton, Director, DNRC, said that it is critical to have legal definition with our water rights, so that discrepancies can be settled through the courts. Most importantly, it is needed so that downstream states do not lay claim to Montana's water rights.

In the 1980's, DNRC had 37 people working on water rights adjudication; due to cuts in their funding, they are now down to three employees. This has resulted in long delays in processing water rights claims. HB 22 has specific benchmarks and safeguards that DNRC supports, and agrees that they should be reviewed every two years.

[EXHIBIT\(aph37a04\)](#)

[EXHIBIT\(aph37a05\)](#)

[EXHIBIT\(aph37a06\)](#)

John Prinkki, Carbon County Commissioner, Montana Association of Counties, Rock Creek Water Users Association, said that these three groups recognize the urgency of HB 22. He said that he thinks it is embarrassing that Montana has let this issue languish for close to 30 years.

Robert Goffeni, Deadmans Basin Water Users Association, said that they have had a petition before the Water Court since 2000 to determine their water rights. They have learned that this process needs to be sped up, which is what HB 22 would accomplish.

{Tape: 1; Side: B; Approx. Time Counter: 18.1 - 25.3}

Bob Lane, Chief Legal Counsel, Fish, Wildlife and Parks (FWP), said that HB 22 provides for an accurate and timely adjudication of water rights. He said that the Environmental Quality Council did a phenomenal job of recognizing the problem and coming up with a solution. The water rights fee is an excellent way of allocating the costs to cover the budget, even though FWP will be the single largest payer.

[EXHIBIT\(aph37a07\)](#)

[EXHIBIT\(aph37a08\)](#) submitted in writing

Opponents' Testimony:

[EXHIBIT\(aph37a09\)](#) - submitted by mail

Informational Testimony:

Bruce Loble, Chief Water Judge, Montana Water Court, said that he is available for answering questions.

Questions from Committee Members and Responses:

REP. MORGAN asked why the bill has an effective date of July 1 instead of upon passage. **Mary Sexton** said that it will take until July 1st to be ready. Immediately, they will begin recruiting for 30 staff positions and finding office space for them, and also working on the new database.

REP. MORGAN followed up by asking what funds they would be using to cover the recruitment and database expenses. **Mary Sexton** said they currently have funding for the database enhancement, along with the \$400,000 funding from the Governor's budget. Employee recruitment and looking for office space is not that expensive and can be covered under their existing budget.

{Tape: 1; Side: B; Approx. Time Counter: 25.3 - 32.6; Comments: End of Tape 1}

REP. SESSO asked if the fees being generated will also cover the cost of the increased workload in Water Court. **REP. MCNUTT** said the \$3.1 million per year covers the expenses in Water Court and the DNRC.

REP. WITT asked the sponsor if he was comfortable with the oversight provided for in HB 22, and also asked how much has been spent up to this point. **REP. MCNUTT** said that he is more comfortable with oversight today, than when he first introduced the bill. This is because of the change from a statutory appropriation, the benchmarks to review the program biennially and period reports to the Environmental Quality Council. He said that the State has spent \$39 million over the past 27 years on water rights adjudication.

CHAIRMAN BUZZAS asked about the \$2.0 million in the Governor's budget for this process. **REP. MCNUTT** said the Governor's budget has additional money for the water adjudication process; \$400,000 will be for the database.

REP. WITT asked if HB 69, **REP. BARRETT'S** water adjudication bill, will go away if HB 22 passes. **REP. MCNUTT** said, "Yes."

REP. JAYNE said that Indian reservations have individuals who have private fee lands. She asked if there needs to be more funding in the future to cover the adjudication of their tribal water rights. **Judge Loble** said the Water Court has the jurisdiction to adjudicate all water rights in Montana, including tribal and Federal Government. There is a Reserved Water Rights Compact Commission that is negotiating reserved water rights with

the tribes and the federal government. All of the compacts that they have negotiated must come to the Water Court to be approved. If a compact is not reached by 2009, those tribes have to file their water rights claims within six months. Then the Water Court will adjudicate the tribe's, the State's and the Federal Government's water rights at the same time. The people with private fee lands around the reservations will not have decrees issued until the compacts have been approved, because it may adversely affect the compact negotiations.

REP. JAYNE asked why HB 22 has a termination date. **REP. MCNUTT** said that they have calculated that they will reach the necessary \$31 million in fees by the termination date.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 12.8}

REP. SESSO asked what the water users think about the fee. **Bob Goffeni** said that water users on the lower Musselshell River have had problems, and have had to have the district court judge determine decreed water for them. Therefore, these people would pay anything to get the water rights straightened out.

REP. SESSO asked if he knew what the users on the upper river thought about the fee. **Bob Goffeni** said that people at the headwaters have never had a water shortage, and therefore, do not understand the water rights issue. Many of these people do not support anything other than the status quo.

REP. SESSO asked what the amount of work will be to go through all the steps to reach a final decree. **Judge Loble** said that the compacting process for issuing water rights decrees in the various basins originally took much longer than expected. Therefore, they began issuing temporary preliminary decrees, which are now the vast majority. The next step in the process would be to move these to a preliminary decree. Once they have dealt with all objections, they will be able to move them to a final decree.

{Tape: 2; Side: A; Approx. Time Counter: 12.8 - 19.9}

REP. RIPLEY asked if the Water Resources Division of the DNRC was a part of the process in working with the Environmental Quality Council (EQC). **Jack Stults, Water Resources Division, DNRC**, said that they worked closely with the EQC on ever aspect of this entire process.

REP. RIPLEY asked if HB 22 gives the Water Resources Division the staff and database system they need to finish the water adjudication process. **Jack Stults** said that under HB 22, they will be able to finish the adjudication process. He said that their department has experienced staff who can work on this

process and that they are confident they will be able to meet the benchmarks.

REP. JUNEAU asked if copies of HB 22 have been sent out to the Indian tribes and if they support it. **Mary Sexton** said that the tribes are aware of HB 22, but a copy of the bill has not been specifically sent to them.

REP. JUNEAU requested that a copy of HB 22 be sent to tribes prior to the Committee taking executive action. **Crysta Lee Evans, Legislative Services Division**, said that the bill specifically exempted tribal reserved rights and claims to water as part of the fee structure.

Closing by Sponsor:

REP. MCNUTT said that the EQC did a tremendous amount of work in arriving at HB 22.

ADJOURNMENT

Adjournment: 5:00 P.M.

REP. ROSALIE (ROSIE) BUZZAS, Chairman

MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

EXHIBIT ([aph37aad0.TIF](#))